

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CHARLES HENRY DORSEY	§	
v.	§	CIVIL ACTION NO. 6:07cv398
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Charles Henry Dorsey, proceeding *pro se*, filed this application for the writ of habeas corpus complaining of the legality of his confinement. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Dorsey was convicted of theft of property on October 14, 1991, receiving a sentence of 14 years in prison. He says that the statute governing the crime carries a maximum punishment of ten years in prison, and so he is “actually innocent” of the sentence which he received.

The Magistrate Judge reviewed Dorsey’s petition and determined that it was the second such petition which Dorsey had filed concerning the same conviction, raising the same issue. His previous petition was styled Dorsey v. Director, TDCJ-CID, civil action no. 6:00cv360 (E.D.Tex., dismissed November 17, 2000, appeal dismissed June 14, 2001). 28 U.S.C. §2244(b)(1) provides that a claim presented in a second or successive habeas corpus petition which was presented in a prior application “shall be dismissed.” Because Dorsey has previously raised this same claim in a federal habeas corpus petition, the Magistrate Judge said, it falls under this statute and should be dismissed. The Magistrate Judge also recommended that Dorsey be denied a certificate of appealability *sua sponte*.

Dorsey filed objections to the Magistrate Judge's Report on September 19, 2007. In his objections, Dorsey argues that he is actually innocent and that this actual innocence is sufficient to overcome the "procedural bar." He argues his claim on the merits, saying that his conviction violated due process, and says that his prior petition was not addressed "on the merits" because it was dismissed due to the expiration of the statute of limitations.

Dorsey's objections are without merit. As the Magistrate Judge correctly concluded, Dorsey's claims have been previously presented to the Court and determined to have no merit, and Dorsey's appeal of this decision was dismissed by the Fifth Circuit.¹ He has failed to show any basis upon which to proceed in the district court; in fact, the district court lacks jurisdiction to consider a second or successive petition which was filed without permission from the Fifth Circuit. Crone v. Cockrell, 324 F.3d 833, 838 (5th Cir. 2003). Dorsey's objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the original petition, the Report of the Magistrate Judge, the Petitioner's objections thereto, and all pleadings, documents, and records in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the objections of the Petitioner are without merit. It is accordingly

ORDERED that the Petitioner's objections are overruled and that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further


ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. However, should Dorsey seek and receive permission from the Fifth Circuit to file a successive habeas corpus petition, he may file such a petition in the district court. It is further

ORDERED that the Petitioner Charles Dorsey is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

¹The decision that Dorsey's petition was barred by the statute of limitations resulted in a dismissal with prejudice and thus was effectively a decision "on the merits."

ORDERED that any and all motions which may be pending in this action are hereby
DENIED.

SIGNED this 2nd day of October, 2007.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE